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C O N F I D E N T I A L SECTION 01 OF 02 KUWAIT 002245

SIPDIS

STATE FOR NEA/ARP

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SUBJECT: (SBU) NATIONAL ASSEMBLY: FAILED JULY 13
'EXTRAORDINARY SESSION' ON MUNICIPALITIES LAW PROVOKES
CONSTITUTIONAL DEBATE

Classified By: Ambassador Richard H. Jones for reason 1.4 (d)

¶11. (C) Summary: After more than a year of conspicuous inaction by the GOK and parliament on municipal reform, the National Assembly failed to reach a quorum in the July 13 extraordinary session called to debate an Amiri decree postponing Municipal Council elections for another year. This provoked a constitutional debate about the validity of the decree, detracting from the serious issue of reforming an institution seen as corrupt. End Summary.

¶12. (SBU) The National Assembly failed to produce a quorum during the July 13 extraordinary session called to debate the July 5 Amiri decree postponing Municipal Council elections for one more year or until a new Municipalities Law is passed by the National Assembly, whichever comes first. The new decree is a re-issuance of a decree issued on July 15, 2003 -- voted down just days before the June 30, 2004 recess of the National Assembly-- which had postponed elections for a new municipal council for one year and installed a government-appointed Municipal Affairs Committee to replace the 16 member elected Municipal Council which had long governed the activities of Kuwait's municipalities.

¶13. (U) The constitution requires that any Amiri decree issued while the National Assembly is in recess be "referred to the National Assembly within fifteen days" (Article 71). The GOK dutifully submitted the July 5 decree and an extraordinary session was called for July 13. However, the session was gavelled shut after only half an hour when the Assembly failed to produce a quorum of members, leaving the government and many National Assembly members at odds over the validity of the decree. The GOK claims the decree is valid because the fact that an extraordinary session was called to debate the decree proves the government had referred the decree to the Assembly within fifteen days. Some National Assembly members and political scholars disagree, claiming that the decree cannot be considered referred to the National Assembly until a quorum of the Assembly has formally taken note of it. This is reportedly the first time ever that a session called to address a decree issued while the National Assembly was in recess failed to reach a quorum. (Comment: On the face of it, the critics' argument is not convincing: Article 93 makes clear that some functions of the Assembly can continue during recess; the calling of an extraordinary session is treated separately (in Art. 88) from referral of recess decrees. The critics' interpretation would give the Assembly a pocket veto over Amiri decrees issued while the Assembly is in recess.
End Comment.)

¶14. (U) The GOK issued the July 5 decree after an identical decree issued in 2003 was voted down in the final days of the 2004 session. The 2003 decree had itself been a response to the failure of the 2003 National Assembly to act upon an amended version of the 1972 Municipalities Law, which the GOK had introduced during the 2003 session. The National Assembly again took no action on the municipalities bill during the 2004 session.

¶15. (C) MPs and political commentators interviewed by Poloff say the GOK did not place the passage of the bill high on its list of priorities. They pointed out that the GOK itself had waited over a year to take any action on municipal reform, and then only moved to ratify the original 2003 decree. "The Government did not exert serious effort to pass the (bill) within the specified time," political columnist Ahmed Al-Deyan told Poloff (Comment: Of course, neither did the elected MP's. End Comment). Deyan had predicted that the July 13 session would not produce any action and would "pave the way for a crisis." He forecast that the impasse would not be resolved until the National Assembly returned to work in October, when a quorum of members would be present to take up the referred decree and/or the 2003 bill.

¶16. (SBU) The three major amendments proposed by the government's 2003 bill would have: fixed a hole in the law that allows the Municipal Council to override GOK vetoes of its proposals, vesting this authority back in the national executive; de-linked the Chairmanship of the Municipal Council from the Chairmanship of the Kuwait City Municipality (seen as an anti-corruption measure); and allowed women to vote in elections for the Municipal Council, testing the

waters vis--vis the GOK's declared interest in extending suffrage to women at the national level.

¶ 17. (C) But, say our interlocutors, politics -- specifically, an attempt to address a glaringly public corruption problem -- is the real motivation behind the government's 2003 introduction of the amendments as well as the reason no action has been taken to resolve the fate of the bill. "A seat on the Municipal Council is your best chance to become a millionaire," confided Khalifa Al-Khorafi, a ten year veteran of the now dissolved Municipal Council who claims corruption among Municipal Council members was so great and so public that the government was forced to introduce amendments to the 1972 law or appear incompetent to the general electorate. Khorafi told Poloff the government introduced the 2003 bill in order to appear to be addressing the issue of corruption, but has in fact done nothing to promote its passage. "The law means more headaches for the Prime Minister," said Khorafi, referring to a section of the bill which would give the current State Minister for National Assembly Affairs Mohammed Dhaifallah Sharar an additional ministerial portfolio for Municipalities Affairs, and which would subject him to greater scrutiny and possible parliamentary grillings.

¶ 18. (C) MP Ahmed Al-Mulaifi told Poloff that little effort was put into revisiting the issue of the draft Municipalities Law during the 2004 session, but blamed Minister Sharar -- the GOK's point person on this issue -- for dragging his feet. Mulaifi said Sharar is pursuing his own political agenda rather than supporting Prime Minister Shaykh Sabah al-Ahmed's political goals, which he said include the passage of these amendments. Mulaifi, who called the 1972 Law a "dinosaur" and who supports drastic reforms, told Poloff that members of the Municipal Council had influenced Minister Sharar to pursue "intentional negligence." He said the Minister prefers the 1972 law without amendments, as it allows him some authority over the Municipal Council while not vesting him with political responsibility for what is widely acknowledged to be a transparently corrupt organization.

¶ 19. (C) The Governor of Mubarak al-Kabir (Shaykh Mubarak al-Hamad al-Sabah) made identical points as Khorafi on the corrupt state of the municipalities in a July 14 meeting with the Ambassador. He attributed the GOK's move to postpone the elections to a desire to complete anti-corruption reforms beforehand.

¶ 10. (C) Mulaifi, a lawyer, predicted that the crisis would eventually end up being resolved in Kuwait's court system. In his opinion, the July 5 decree is null and void unless taken up by a quorum of the National Assembly within 15 days of issuance. He added that if the government insists on the legality of the decree, Kuwaiti citizens would challenge decisions by the Municipal Affairs Committee. When this happens, "all of the court cases will be won" by the plaintiffs, he predicted.

¶ 19. (C) Comment: We have serious doubts about the viability of the critics' constitutional interpretation. The government has the option of referring the matter to the Constitutional Court. That may be where the matter gets settled. Meanwhile, the prospect of true reform of the Municipalities Law is postponed at least until fall.
JONES